

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

<p>MICHAEL VARIO, an individual,</p> <p>Plaintiff,</p> <p>vs.</p> <p>ALLSTATE FIRE &amp; CASUALTY INSURANCE COMPANY, a foreign insurance company,</p> <p>Defendant,</p> <p>and</p> <p>FIRST NATIONAL INSURANCE COMPANY,</p> <p>Intervenor.</p>	<p>Cause No.: 2:16-cv-01900</p> <p><b>STIPULATION AND ORDER ALLOWING PLAINTIFF TO AMEND THE COMPLAINT</b></p>
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**STIPULATION**

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, Plaintiff Michael Vario, Defendant Allstate Fire & Casualty Insurance Company (“Allstate”), and

Intervenor First National Insurance Company, by and through their respective attorneys, stipulate and consent to the Plaintiff filing the amended complaint attached as Exhibit A.

Under the amended complaint, Allstate is no longer the defendant in this action and, instead, Intervenor, First National Insurance Company, is the defendant. Plaintiff desires to amend his complaint because he has settled his claims with Allstate, but still wishes to pursue his underinsured motorist claim against First National Insurance Company. Concurrently with this stipulation, Plaintiff and Allstate filed a stipulation and proposed order dismissing all of Plaintiff's claims against Allstate with prejudice and without fees and costs to either party.

STIPULATED and AGREED this 10<sup>th</sup> day of July, 2017.

FOX ROTHSCHILD LLP

WILSON SMITH COCHRAN DICKERSON

By /s/ Bryan J. Case  
Gavin W. Skok, WSBA #29766  
Bryan J. Case, WSBA #41781

*Attorneys for Allstate Fire and  
Casualty Company*

By /s/ Morgan Smith  
John M. Silk, WSBA #15035  
Morgan Smith, WSBA #37954

*Attorneys for First National Insurance  
Company*

BILL COATS LAW, PLLC

By /s/ Bill Coats  
Bill Coats, WSBA #24537

*Attorney for Michael Vario*

## ORDER

THIS MATTER having come before the undersigned on the foregoing stipulation of Plaintiff Michael Vario, Defendant Allstate Fire & Casualty Insurance Company, and Intervenor First National Insurance Company, and the Court being fully advised of the same, it is hereby ORDERED that Plaintiff may amend his complaint as set forth in Exhibit A.

DATED this 10 day of July, 2017.



RICARDO S. MARTINEZ  
CHIEF UNITED STATES DISTRICT JUDGE

Presented by:

BILL COATS LAW, PLLC

By /s/ Bill Coats  
Bill Coats, WSBA #24537  
*Attorney for Plaintiff*

FOX ROTHSCHILD LLP

By /s/ Bryan J. Case  
Gavin W. Skok, WSBA #29766  
Bryan J. Case, WSBA #41781  
*Attorneys for Allstate Fire and Casualty Company*

WILSON SMITH COCHRAN DICKERSON

By /s/ Morgan Smith  
Morgan Smith, WSBA  
*Attorneys for First National Insurance Company*

## EXHIBIT A

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

<p>MICHAEL VARIO, an individual,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>FIRST NATIONAL INSURANCE COMPANY, a foreign insurance company,</p> <p>Defendant.</p>	<p>No. 2:16-cv-01900-RSM</p> <p><b>FIRST AMENDED COMPLAINT FOR DAMAGES</b></p>
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COMES NOW the Plaintiff Michael Vario, through his attorney, Bill Coats of  
Bill Coats Law, PLLC and alleges:

1. Plaintiff Michael Vario is a resident of Whatcom County, Washington.
2. Defendant First National Insurance Company (hereinafter “Safeco”) is an out-of-state insurance company that does business in Washington State.
3. This action was originally filed by Plaintiff Vario in the Washington State Superior Court for Whatcom County and named Allstate Fire & Casualty Insurance Company as defendant. Allstate Fire & Casualty Insurance Company removed the case based on

diversity of the parties to the United States District Court for the Western District of Washington.

4. Defendant Safeco was granted leave to intervene.
5. Plaintiff Vario eventually settled his claims against Allstate Fire & Casualty Insurance Company.
6. Defendant Safeco sold a policy of insurance to Plaintiff Vario which was in full force and effect on May 12, 2014. The Safeco insurance Policy Number was H2187668 and contained uninsured/underinsured (hereinafter "UIM") benefits of \$500,000 per person. At all relevant times, Plaintiff Vario was an insured person and was covered under the Safeco UIM policy.
7. This court has jurisdiction over the parties and over the subject matter of this action.
8. Venue is properly set in the United States District Court for the Western District of Washington at Seattle.
9. Plaintiff Michael Vario was injured in an automobile collision which occurred in Whatcom County on May 12, 2014.
10. A proximate cause of the collision was the negligence of Douglas McAcy.
11. Douglas McAcy had liability limits of \$50,000.
12. On May 12, 2014, Michael Vario was a passenger in Heather MacKay's Honda Accord. They were traveling south on Interstate 5 in the left lane. Shortly before the accident, while Heather MacKay's Honda was in the left lane, Ms. Fattahi was driving her VW Jetta in the right lane. Mr. McAcy, also in the right lane, was following very closely behind Ms. Fattahi's VW Jetta.

13. Ms. Fattahi lost control of her VW Jetta, and it swerved from the right lane across the left lane and into a ditch. Heather MacKay applied her brakes, slowed and was able to avoid hitting Ms. Fattahi's VW Jetta. If only Heather MacKay's Honda and Ms. Fattahi's VW Jetta had been on the road, there would not have been a collision or any injuries.
14. However, Mr. McAcy was following too close to the VW Jetta for highway speed. When Ms. Fattahi lost control, Mr. McAcy was only one to two car lengths behind, and so to avoid crashing into her VW Jetta he swerved into the left lane and crashed into Heather MacKay's Honda. The collision caused Michael Vario injuries and other damages, including neck surgery.
15. As a direct and proximate result of the negligent acts of underinsured motorist Douglas McAcy, Michael Vario: a) sustained severe physical and mental pain and suffering and injury and has sustained other general damages, including impairment of enjoyment of life, disability and disfigurement; b) has been required to seek medical treatment and care; c) has incurred lost wages; and d) has incurred expenses for essential services and for transportation to medical appointments.
16. The total amount of damages caused by Mr. McAcy to Mr. Vario are in excess of \$150,000; the exact amounts to be proven at trial.
17. Michael Vario's claim for payment of Safeco UIM benefits arises from the injuries and damages he sustained as a result of the collision. Safeco stands in the shoes of the underinsured driver, Douglas McAcy, for purposes of liability for Michael Vario's damages under the UIM coverage.
18. Mr. Vario is entitled to fair and reasonable compensation up to the \$500,000 Safeco UIM limits for the economic and non-economic losses caused by Mr. McAcy.

19. Plaintiff's damages exceed the \$50,000 in liability limits available under the at-fault driver's automobile insurance policy and the \$100,000 in UIM limits that were available under Allstate Fire & Casualty Insurance Company. Allstate insured Heather MacKay, the driver of the vehicle in which Plaintiff Vario was a passenger.
20. This is a contractual action for UIM benefits due to Plaintiff Vario as an insured with Defendant Safeco.
21. Plaintiff made a UIM claim with Defendant Safeco.
22. Defendant Safeco denied the claim and refused to offer any payment under the applicable UIM policy.

#### **PRAYER**

WHEREFORE, Plaintiff Michael Vario prays for judgment against the Defendant Safeco as follows:

1. For payment of his valid claim for UIM benefits, calculated as Mr. McAcy's liability for Mr. Vario's damages less a set-off of \$150,000, and up to the UIM limits of \$400,000. Mr. Vario's general and special damages include: a) reasonable and necessary hospital, doctor and related medical treatment; b) general damages, including impairment of his ability to enjoy life, mental and physical pain and suffering, disability and disfigurement; c) lost wages; and d) essential services and transportation costs for attending medical appointments;
2. For taxable costs and disbursements incurred; and
3. For such other and further relief as the Court deems just and proper.

DATED this \_\_\_\_\_ day of July, 2017.

BILL COATS LAW, PLLC

BY: \_\_\_\_\_  
Bill Coats, WSBA #24537  
Attorney for Plaintiff Vario